

No. 9451.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT 10

ONG GUEY FOON,

Appellant,

vs.

HARRY B. BLEE, Assistant Director of Immigration and
Naturalization,

Appellee.

BRIEF OF APPELLEE.

BEN HARRISON,

United States Attorney,

By RUSSELL K. LAMBEAU,

Assistant United States Attorney,

United States Postoffice and Court House
Building, Los Angeles,

Attorneys for Appellee.

FILED

MAY 13 1940

TOPICAL INDEX.

Statement of the Case.....	1
Question at Issue.....	2
Argument	3
Discrepancies relating to the home village.....	10
Discrepancies relating to family.....	13
Applicant's identification as the previously excluded Ong Guey Chuck	14
Other discrepancies	18
Reply to appellant's brief.....	18
Conclusion	21

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Chin Ching v. Nagle (C. C. A. 9), 51 F. (2d) 64.....	18
Chin Share Nging v. Nagle (C. C. A. 9), 27 F. (2d) 824.....	13
Jew Theu v. Nagle (C. C. A. 9), 35 F. (2d) 858.....	12
Jung Yen Loy v. Cahill (C. C. A. 9), 81 F. (2d) 809.....	20
Lee How Ping v. Nagle (C. C. A. 9), 36 F. (2d) 582.....	13
Lum Sha You v. United States, 82 F. (2d) 83.....	20
Mui Sam Hun v. United States, 78 F. (2d) 612.....	2, 3
Quock Hoy Ming v. Nagle (C. C. A. 9), 54 F. (2d) 875.....	18
Quon Quon Poy v. Johnson, 273 U. S. 252.....	3, 20
Sullivan ex rel. Jee Gim Bew v. Tillinghast (C. C. A. 1), 28 F. (2d) 812	13
Tisi v. Tod, 264 U. S. 131.....	17, 20
Tulsidas v. Insular Collector of Customs, 262 U. S. 258.....	15, 20
United States v. Ju Toy, 198 U. S. 253.....	20
White v. Young Yen (C. C. A. 1), 278 F. 619.....	18
Won Yin Loon v. Carr (C. C. A. 9), 108 F. (2d) 91	3, 19
Wong Tin v. Ward (C. C. A. 1), 102 F. (2d) 146.....	3
Woon Sun Seung v. Proctor (C. C. A. 9), 99 F. (2d) 285.....	19, 20

STATUTES.

Immigration Act of February 5, 1917, Sec. 17 (8 U. S. C. A. 153)	2
Revised Statutes, Sec. 1993.....	3

TEXTBOOKS.

Underhill's Criminal Evidence, 3rd Ed., Sec. 186, p. 261.....	17
---	----

No. 9451.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ONG GUEY FOON,

Appellant,

vs.

HARRY B. BLEE, Assistant Director of Immigration and
Naturalization,

Appellee.

BRIEF OF APPELLEE.

Statement of the Case.

This is an appeal taken from an order of the District Court for the Southern District of California, Central Division, denying appellant's petition for writ of habeas corpus [T. 13].

The appellant, Ong Guey Foon, hereinafter called the "applicant," was born in China, and is of the Chinese race. *He is over 44 years of age and has never resided in the United States before.* On November 20, 1938, he arrived at the port of San Pedro, California, from China and sought admission to the United States as the foreign-born son of a deceased *Ong You*. The Government concedes

that the deceased Ong You was a citizen of the United States. The applicant's case was heard by a Board of Special Inquiry appointed under Section 17 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 153). This Board determined that the applicant had not satisfactorily established that he was the son of the deceased Ong You and unanimously voted to exclude him from admission. The determination was upheld by the Secretary of Labor on appeal. The applicant then applied to the District Court for a writ of habeas corpus and, from an order denying the writ, has appealed to this Court.

Question at Issue.

As laid down by this Court in the case of *Mui Sam Hun v. United States*, 78 F. (2d) 612:

“The question presented in this appeal is solely *‘whether the evidence submitted on the application for admission so conclusively established the (fact in issue) that the order of exclusion should be held arbitrary or capricious. * * * The question is not whether this court, acting on the evidence submitted, might have found differently from the executive branch of the Service; the question is whether or not the latter granted a fair hearing and (sic) abused their discretion * * *.’* *Jue Yim Ton v. Nagle*, 48 F. (2d) 752 (C. C. A. 9). ‘And if it does not affirmatively appear that the executive officers have acted in some unlawful or improper way and abused their discretion, their finding upon the question of citizenship must be deemed conclusive and is not subject to review by the court.’ *Tang Tun v. Edsell*, 223 U. S. 673, 675.” (Italics ours.)

Argument.

From a review of the administrative proceeding the District Court found that the applicant "very plainly had a fair trial and had been given opportunity to present evidence in his behalf." It further found that the findings of the Board were neither arbitrary nor capricious [T. 13]. It is respectfully submitted that in so finding and holding the District Court committed no error. The findings and holding of the District Court finds ample support from the record.

But, let us examine the record to determine whether the Board manifestly abused the power conferred upon it by statute in rejecting the applicant's claim.

We find that the applicant was born in China and is of the Chinese race. Although over 44 years of age, this is the first time the applicant has sought admission to the United States. Being a person of the Chinese race, the applicant was entitled to enter only if he satisfactorily established that he was born a citizen of the United States under the provisions of Section 1993 of the Revised Statutes. To establish his claimed citizenship it was necessary for applicant to prove that he was the legitimate son of the deceased Ong You, who concededly was a citizen of the United States. On this issue the applicant had the burden of proof:

Mui Sam Hun v. United States, supra;

Wong Tin v. Ward (C. C. A. 1), 102 F. (2d) 146;

Quon Quon Poy v. Johnson, 273 U. S. 252;

Won Yin Loon v. Carr (C. C. A. 9), 108 F. (2d) 91, 92.

On this subject the applicant offered no testimony except that of himself and his alleged brother, Ong Guey Bet. A third witness, Quan Shee, had no knowledge whatever of the claimed relationship. She merely testified she saw the applicant twice in China for a period of less than one hour each time [see Q. 237-250, Immigration Record]. No documentary proof of the claimed relationship was offered. The transcript of the testimony given before the Board of Special Inquiry is to be found in Central Office file No. 55997/570, referred to herein as the "Immigration Record." For the convenience of the Court, the Memorandum of the Board of Review, dated September 27, 1939, setting forth the grounds upon which the claimed relationship was rejected, is quoted below:

"Before the Board of Review on APPEAL in EXCLUSION proceedings on reopening.

"In behalf of APPELLANT: Attorney Roger O'Donnell submitted brief when the record was originally transmitted to the Department and has now filed a supplementary brief on reopening.

"Excluded on the ground that the claimed relationship has not been established.

"MOTION: That appeal be sustained on the ground that the applicant is a United States citizen, being the child of Ong You, a native-born citizen of the United States, now deceased.

"The case was reopened for further consideration in accordance with instructions of April 28, 1939.

"The citizenship of the alleged father, Ong You, is conceded. In prior records he has claimed four sons. One of these alleged sons, Ong Guey Bet, was admitted in 1915 and was last in China between 1921 and 1923. An alleged son, Ong Guey Chuck, applied

for admission March 30, 1917. He was rejected and his appeal withdrawn, whereupon he was deported. An alleged son of applicant's name and approximate age has been claimed in previous records. The alleged brother Ong Guey Bet and Quan Shee, an alleged acquaintance of Ong Guey Bet who was last in China in 1937 and 1938, have appeared to testify on behalf of applicant.

“On the first hearing before the Board of Special Inquiry the Board pointed to certain discrepancies concerning the number of houses in the village and the names of persons residing in certain houses in the village. The Board of Special Inquiry also pointed out that the applicant failed to identify the photographs of his alleged brother Ong Guey Bet and his alleged brother Ong Guey Chuck, who was rejected and deported. The Chairman of the Board of Special Inquiry, in his summary, stated that the supporting evidence is very meagre, the alleged brother Ong Guey Bet being the only alleged blood relative to appear on applicant's behalf. The fact that Ong Guey Bet is the only blood relative appearing in the case is an important factor, it appearing that due to his long absence from China Ong Guey Bet professes at this time to have very little knowledge concerning the home village and its surroundings. Attention is also called to the fact that when he testified in the case of his alleged brother Ong Guey Chuck, who was rejected and deported, his testimony was found to be so contradictory that the Board of Special Inquiry found it extremely unsatisfactory. In the present case he refers to the testimony then given and says that while he has no recollection of the matters inquired into at this time, what he said then was correct. It appears, therefore, that his support to the application is of little value. While he claims to be the moving

factor in bringing the applicant to the United States at this time, he testified that he never has corresponded with the applicant during the many years since he (Ong Guey Bet) left China.

“The Board of Special Inquiry, in its summary, called attention to the fact that there is a remarkable resemblance between the applicant and the photograph in the records of the rejected alleged brother Ong Guey Chuck. The Board of Review, upon examination of the photographs, found not only a remarkable resemblance, but found that the photographs of Ong Guey Chuck and the applicant are practically identical. A scar near the corner of the mouth of Ong Guey Chuck as it appears in his photograph was noted. For this reason the Board of Special Inquiry was directed to compare the applicant in person with the photograph of Ong Guey Chuck, and, if it was found that applicant has the scar appearing on the photographs of Ong Guey Chuck, the Board was authorized and directed to reopen the case for further examination. Upon examination of the applicant the Board of Special Inquiry found that he bears such a scar, whereupon the case was reopened as directed.

“In his summary submitted on reexamination, the Chairman of the Board of Special Inquiry stated that the photograph of Ong Guey Chuck shows that he had a circular scar at the outer corner of and just above his left upper lip. He noted that the applicant, ONG GUEY FOON, has a circular scar over the outer corner of his left upper lip. He states that the scar on ONG GUEY FOON’S person appears to be closer to his nose than the scar shown on the photograph of Ong Guey Chuck, but that on comparing the photograph of the applicant marked Exhibit ‘D’ with that of Ong Guey Chuck the scars appear to be relatively

in the same position. If they are not in identically the same position, it is doubtless due to the fact that according to the testimony of the applicant his upper lip was deformed by an accident in 1934, which drew his upper lip out of position. Upon examination of the applicant and comparison with the photograph of Ong Guey Chuck the Board of Special Inquiry found that a vertical scar starting at the hair line and going upward at the left center of the forehead is present in the photograph of Ong Guey Chuck, and that a personal examination of the applicant shows such a scar in the identical location, which scar may be seen on Exhibit 'D.' The Board of Special Inquiry also found that the photograph of Ong Guey Chuck shows a circular scar on the right cheek near the outer corner and above the mouth, this scar having a smaller scar above it. Upon examination the applicant was found to bear such scars in the identical location above stated, which may be noted on Exhibit 'D.' The photograph of Ong Guey Chuck shows a scar on the right side of the nose, level with the right eye. The applicant has a scar in the same location, and such scar may be noted on Exhibit 'D.'

“An examination of the photograph of Ong Guey Chuck shows that his left eye appears to be smaller than his right eye. Personal examination of the applicant reveals this same characteristic. The Board of Special Inquiry found that the applicant has marks and scars which are not shown on the photograph of Ong Guey Chuck but that the photograph of Ong Guey Chuck shows no marks or scars that are not present on the applicant.

“The Board of Special Inquiry called before it Inspector Raymond M. Tong, who has had some eight years' experience, five years of this time being as chairman of a Chinese Board of Special Inquiry.

He testified that he has had wide experience in the comparison of applicants and photographs, and the identification of applicants with such photographs. He examined the photographs in the record, and after an examination of the photograph of the applicant and the photograph of Ong Guey Chuck, in San Francisco file 16048/5-1, he gave as his opinion that they represented the same person.

“On behalf of applicant one John L. Harris submitted a written statement. He claims to be an expert in the examination of questionable documents. He claims to have testified in regard to such matters before the Federal Courts. In his opinion the evidence presented by the photographs of Ong Guey Chuck and the applicant is vague, uncertain and unreliable, and in his opinion it is not reasonable to assume upon such evidence that these two photographs represent the same person. He makes no reference to nor gives any consideration to the fact that the applicant bears four or five scars and characteristics which are identical with those shown on the photograph of Ong Guey Chuck. In addition to his written statement, he has taken an enlarged photograph of Ong Guey Chuck and superimposed thereon a photograph of the applicant, and claims that this comparison indicates that they are not identical, pointing out that the chin of the applicant in his photograph is apparently longer than the chin of Ong Guey Chuck. There is no way of determining whether the difference in the length of the chin is due to the additional weight of the applicant as compared with that of Ong Guey Chuck, who was a slender young man at the time the photograph was taken, or what part of the length of the chin is due to flesh accumulation.

“The witness, Quan Shee, testified that she first saw the applicant on May 24, 1937, when he was

approximately forty-one years of age. She states that she became acquainted with Ong Guey Bet in the United States four or five years ago, and that at his instance she went to the Suey Low Village where she visited the home of the applicant's alleged mother. She says that she was in the village about one-half hour and again visited the village for about the same time before her return to the United States. She has never met the applicant's alleged father and knows nothing about the applicant's family or his occupation, and has no way of knowing that the applicant is a son of his alleged father, Ong You, except what she was told by Ong Guey Bet.

"In the opinion of the Board of Review the applicant has been shown by the photographic evidence to be identical with the Ong Guey Chuck who was rejected in 1917. When it is considered that the features of Ong Guey Chuck and the applicant are of the same formation in every particular and that the applicant bears a number of scars which appear on the photograph of Ong Guey Chuck the conclusion is inescapable that they are one and the same person. If this be the fact, the applicant is seeking to secure admission by fraud.

"It is recommended that the appeal be DISMISSED."

It will thus be seen that the discrepancies which formed the basis of the excluding decision were on important and material matters. These discrepancies, coupled with the applicant's identification with the previously excluded and deported Ong Guey Chuck and other minor discrepancies in the testimony, afford substantial basis for the Board's decision and the holding that the applicant has not sustained the burden of proof. We will briefly discuss these various discrepancies:

Discrepancies Relating to the Home Village.

Bearing in mind the size of the home village and the mature ages of the actors in this case, it is not unreasonable nor unfair to require an exact agreement among them as to the size and composition thereof. There is no such agreement.

Let us compare the testimony of the applicant with that of his alleged father and witness brother regarding the number of houses in the village in which he claims to have been born and raised. We find these differences:

On April 28, 1915 [see File No. 22403/6-5], the witness Ong Guey Bet testified, under oath at San Francisco, that there were *twelve (12) houses* in the village. In the same proceeding the *alleged father* testified, May 22, 1915, that there were but *twelve (12) houses*. Again, on April 11, 1917 [see File 16048/5-1], Ong Guey Bet testified there were but *twelve (12) houses*, and in the present proceeding he testified his previous statements regarding the number of houses in the home village were correct [see Immigration Record p. 32]. But what does this applicant say concerning the number of houses in the village in which he claims to have been born and lived for 43 years—the greater part of his life? In contradiction of the testimony of his alleged father and brother he testified there were *fourteen (14) houses* until 1917, and *fifteen (15) houses* and one (1) lantern house thereafter. The applicant's testimony in this connection [see Immigration Record p. 12] reads as follows:

“129 Q How large is the SUEY LOW VILLAGE?

A It has 15 dwelling houses and one lantern house.

130 Q How long has the village had fifteen dwelling houses and one lantern house?

A Since C. R. 6 (1917) in that year my uncle built a house, prior to that time there were only *14 dwelling houses*. The lantern house was also built in C. R. 6 (1917).

131 Q Is your uncle's house and the lantern house the only buildings which have been built in your village *within your memory*?

A Yes.

132 Q Then is it correct that all during your memory there were always 14 houses in the village until C. R. 6 (1917) when your uncle built a house and when the lantern house was built?

A No, not exactly, there was a lantern house prior to C. R. 6 (1917). It was located at the tail or west side of the village, but that lantern house for some reason was taken down and a new one built at the head or east of the village. There were only *14 dwelling houses* until C. R. 6 (1917) when my uncle built his house. Those fourteen houses were there during my memory." (Italics ours.)

The alleged brother witness, who had testified there were but twelve houses in 1915 and 1917, made a trip to China in 1921 and remained there until 1923. He then found but one change in the number of buildings. He testified [Immigration Record p. 33]:

"375 Q I will again ask you what changes there was in the village from the time of your departure in 1915 as between your visit to the village in 1921 to 1923?

A The only difference is the building of the new school house at the east side and the disappearance of the old lantern house or school house at the west side."

There is not only a variance as to the number of houses in this diminutive village of 12 houses, but also a disagreement as to their arrangement [see Immigration Record p. 13]:

APPLICANT TESTIFIES :	ON GUEY BET TESTIFIES :
The village has 5 rows.	The village has 5 rows.
The first row has 1 house.	The first row has 2 houses.
The second row has 2 houses.	The second row has 4 houses.
The third row has 4 houses.	The third row has 4 houses.
The fourth row has 4 houses.	The fourth row has 2 houses.
The fifth row has 4 houses.	The fifth row is vacant.

Then there is also the discrepancy as to the names and identity of some of the occupants of the several houses in the village. These are matters upon which there should be complete agreement if the applicant is in fact the person he claims to be. Bearing in mind the size of the village (12 houses), and the mature ages of the parties, can it be fairly said that it was unreasonable to reject the applicant's claim? Appellee submits that these discrepancies are sufficiently serious to preclude the determination that the applicant was denied a fair hearing or that the District Court committed error in sustaining the findings of the Board. The cases are legion where the courts have refused to interfere because of the existence of less serious discrepancies. In the case of

Jew Theu v. Nagle (C. C. A. 9), 35 F. (2d) 858,

there were conflicts as to the location of the few houses in the village and whether the applicant's prior landed brother lived in his house just prior to applicant's coming to the United States. In that of

Chin Share Nging v. Nagle (C. C. A. 9), 27 F. (2d) 824,

there were discrepancies relating to the village school and as to who was living in front of his home. In that of

Sullivan ex rel. Jee Gim Bew v. Tillinghast (C. C. A. 1), 28 F. (2d) 812,

there were disagreements between applicant's and his witnesses' testimony relating to the location of a fish pond. In that of

Lee How Ping v. Nagle (C. C. A. 9), 36 F. (2d) 582,

inter alia discrepancies as to neighbors in rear of the home and across the street were held to be of the sort that tend to indicate the applicant was not a member of the family claimed.

Discrepancies Relating to Family.

The record shows that the applicant confused the families of two of his alleged paternal first cousins, giving the particulars of Ong Nguey Lin's family, and stating such particulars related to the family of his alleged cousin Ong Nguey Gim [see Immigration Record p. 5 *et seq.*]. True, he later corrected this testimony as to the head of the families [Immigration Record p. 20]. Also, the alleged cousin Ong Nguey Gim, when testifying on July 14, 1937 [File No. 37387/8-20], stated he had twin children. Ong You Som and Ong You Lim, born August 17, 1931, but the

applicant [Immigration Record p. 5] disagrees and testifies that such children are aged 8 and 7, respectively. Further, the alleged cousin Ong Nguey Lin, on May 16, 1930, at the time of his last return from a trip to China [File 29160/6-1], testified he had but one child, a girl, then aged 2, born April 25, 1929, but the applicant states that this Ong Nguey Lin has three children, a girl, aged 8, and twin boys, aged 9. In considering these discrepancies it must be remembered that the families of these alleged cousins lived in applicant's home village of 12 houses and such children were born and raised there.

Applicant's Identification as the Previously Excluded Ong Guey Chuck.

Another important feature of this case appears in the identification of this applicant as the same person who, under the name of Ong Guey Chuck, sought admission at the port of San Francisco, California, April 16, 1917, as the alleged son of Ong You and whose claim was rejected [see File No. 16048/5-1]. Identification was made by a comparison of the photographs of said Ong Guey Chuck and the present applicant. The identification was made more complete through physical identification marks. The Board of Review covers this identification thoroughly, and we direct the Court's attention to the comments made thereon. The Board's memorandum has hereinbefore been copied in full.

Counsel for appellant complains of the applicant's identification with the previously excluded Ong Guey Chuck and charges that in so doing the Board disclosed a hostile determination to exclude. The Board had a right, as well as a duty, to determine whether or not this applicant was

attempting to perpetrate a fraud upon the United States. Such frauds sometimes succeed, but more often fail. It is for this reason that the Government expends money and effort to train officers to be alert against such frauds. And this prompted the Supreme Court of the United States in the case of

Tulsidas v. Insular Collector of Customs, 262 U. S.
258, 265,

to say:

“We think, rather, it will leave the administration of the law where the law intends it should be left, to the attention of officers made alert to attempts at evasion of it, and instructed by experience of the fabrications which will be made to accomplish evasion.”

Now the Board members, who had opportunity to examine and observe the applicant, determined that he was the same person who, under the name of Ong Guey Chuck, unsuccessfully sought to gain admission to the United States in 1917. In this determination they were aided by a comparison of the applicant with the photograph of said Ong Guey Chuck and the expert opinion of Inspector Tong, who has had eight years' experience in the identification of Oriental photographs. On the other hand, the applicant presented a privately employed witness, one John L. Harris, who claimed to be an expert in the examination of questioned documents. He testified that in his opinion the evidence presented by the photographs of Ong Guey Chuck and the applicant is vague, uncertain and unreliable, and in his opinion it is not reasonable to assume upon such evidence that the two photographs represent the same person. He made no reference to nor gave any consideration

to the fact that the applicant bears four or five scars and characteristics which are identical with those shown on the photograph of Ong Guey Chuck. This witness had taken an enlarged photograph of Ong Guey Chuck and superimposed thereon a photograph of the applicant, and claims that this comparison indicates that they are not identical, pointing out that the chin of the applicant in his photograph is apparently longer than the chin of Ong Guey Chuck. Now, there is no way of determining whether the difference in the length of the chin is due to the additional weight of the applicant as compared with that of Ong Guey Chuck, who was a slender young man at the time the photograph was taken in 1917, or what part of the length of the chin is due to flesh accumulation. Also, it is practically impossible for any photographer to take a photograph of a person with the idea of superimposing it on another photograph because in order to successfully do so it must have been taken from the identical angle and the subjects must have been in the identical positions. Finally, even this witness admitted that the photographs could represent the same person. He testified [Immigration Record p. 50]:

“450 Q In your opinion, however improbable, is it possible that these two photographs may represent the same person?”

A *Yes, I think it is possible, based on the general features of the face, that the photographs could represent the same person.*” (Italics ours.)

Under the circumstances it certainly was not unfair for the Board to disbelieve the opinion of the applicant's witness and adopt their own opinion, based on their observation and the testimony of Inspector Tong. The question was one of fact. The Board was the trier of the facts.

It was their duty to conclude whether or not the photographs represented the same person. The testimony of expert witnesses was to aid them in their deliberations. While the general rule is that a jury—in this case the Board—cannot arbitrarily disregard uncontroverted testimony when there is nothing either in the manner or appearance of the testimony itself which makes it improbable or casts discredit on it—the rule does not apply to opinion evidence. The Board may not impugn the motives or doubt the sincerity of the opinion witness, but this does not prevent it from disagreeing with him. “The Chamberlayne Trial Evidence” states, in Section 961, page 940:

“In general then, opinion evidence including that of experts is not controlling upon the jury for while they may not question the motives or sincerity of the witness they may nevertheless disagree with him and disregard the opinion.”

Underhill’s Criminal Evidence, 3rd Edition, Section 186, page 261, states:

“Expert opinions may be viewed by the jury as advisory and should be weighed in connection with all the evidence and they may be disregarded if the jury is convinced they are not correct.”

The rule in cases of the kind here involved is less restrictive. The Board is the exclusive judge of the credibility of witnesses who testify before it and the courts in habeas corpus will not weigh conflicting evidence. See

Tisi v. Tod, 264 U. S. 131,

wherein Mr. Justice Brandeis said:

“We do not discuss the evidence because the correctness of the judgment of the lower court is not to

be determined by inquiring whether the conclusion drawn by the Secretary was correct or by deciding whether the evidence was such that, if introduced in a court of law, it would be held legally sufficient to prove the fact found.”

See, also:

White v. Young Yen (C. C. A. 1), 278 F. 619;

Chin Ching v. Nagle (C. C. A. 9), 51 F. (2d) 64;

Quock Hoy Ming v. Nagle (C. C. A. 9), 54 F. (2d) 875.

Other Discrepancies.

The discrepancies hereinbefore mentioned are the principal ones. There are still other discrepancies which relate to the location of the temple and ancestral halls [Immigration Record p. 40].

Reply to Appellant's Brief.

It is an accepted rule in these Chinese cases where all the information is within the knowledge of the interested parties, that variances in testimony are about the only indicia of the truth or falsity of the story told by the applicant and his witnesses. There is no necessity to cite further decisions because the rule has been enunciated so many times that it is virtually axiomatic. The Immigration Board in this case, considering the discrepancies and variances shown at the hearing, have concluded that the appellant is not the son of Ong You.

Appellant's main contention is that the discrepancies did not afford substantial grounds for rejecting the applicant's claim. We have seen that the discrepancies relate to matters on which there should be complete agreement if the claimed relationship did in fact exist. The appellant offered no more testimony than was offered by the applicant in the recent case of

Won Yin Loon v. Carr (C. C. A. 9), 108 F.
(2d) 91,

where the excluding decision of the Board was affirmed. He offered less testimony than the applicant in the case of

Woon Sun Seung v. Proctor (C. C. A. 9), 99 F.
(2d) 285,

where it was held that discrepancies relating to the school and as to whether the father smoked when he was last in China, were held sufficient to justify rejection of the direct testimony of the applicant, his alleged father and a prior landed alleged brother.

Counsel also contends that the District Court erred in deciding that appellant "has had a fair trial in that no opportunity has been denied him to present evidence in his behalf" [T. 13]. But other than generalizations and conjectures, counsel fails to point out wherein a fair hearing was denied and wherein the Court so erred. He further complains because the District Court felt it was bound by the decision of the immigration officers in spite of the "clear and forcible presentation made in behalf of petition for the writ, and the possibility that the Court might readily reach an opposite conclusion" (Appellant's Brief p.

29). In so stating the District Court was not announcing a novel principle, but was following a well-settled principle of law governing the review of cases of this character. It went no further than the pronouncements of the Supreme Court and of this Circuit Court of Appeals: See:

Quon Quon Poy v. Johnson, supra;

Tisi v. Todd, supra;

Tulsidas v. Insular Collector of Customs, supra;

Woon Sun Seung v. Proctor, supra;

Lum Sha You v. United States, 82 F. (2d) 83, 84.

In the case last cited Circuit Judge Haney stated the rule in this language:

“* * * *Even if the Board's decision seems to us to be wrong, but it is shown that it did not act arbitrarily, that it reached its conclusion after a fair consideration of all facts presented, and that the discrepancies are such that reasonable men might disagree as to their probative effect, appellant has no recourse to the courts.*” (Italics ours.)

See, also:

Jung Yen Loy v. Cahill (C. C. A. 9), 81 F. (2d) 809.

For where there is jurisdiction, a finding of fact by the Executive Department is conclusive:

United States v. Ju Toy, 198 U. S. 253.

Appellee submits that the discrepancies developed in this case are sufficiently serious to preclude the determination that the applicant was not given a fair hearing or that the District Court erred in sustaining such findings.

Conclusion.

As the findings of the administrative officers are based on substantial evidence and as there has been no manifest abuse of discretion, appellee respectfully prays that the order of the District Court be affirmed.

Respectfully submitted,

BEN HARRISON,

United States Attorney,

By RUSSELL K. LAMBEAU,

Assistant United States Attorney,

Attorneys for Appellee.

